

FCC MAIL SECTION

Federal Communications Commission

DA 99-2100

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Before the
 DISPATCHED BY Federal Communications Commission
 Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
 Table of Allotments,
 FM Broadcast Stations.
 (St. James & Fairmont, Minnesota)

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) MM Docket No. 99-298
) RM-9714
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NOTICE OF PROPOSED RULE MAKING

Adopted: September 29, 1999

Released: October 8, 1999

Comment Date: November 29, 1999

Reply Date: December 14, 1999

By the Chief, Allocations Branch

1. The Commission has before it for consideration a Petition for Rule Making filed on behalf of Minnesota Valley Broadcasting Company, Inc. ("Minnesota Valley") licensee of Station KXAC, St. James, Minnesota, requesting the reallocation of Channel 263C2 from St. James, Minnesota, to Fairmont, Minnesota, and modification of its license for Station KXAC to specify Fairmont as its community of license. Minnesota Valley indicated that it would file an application for Channel 263C2 at Fairmont if the channel is allotted to the community.

2. Minnesota Valley filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, Minnesota Valley contends that adoption of its proposal will result in a preferential arrangement of allotments by providing Fairmont with its second FM station and its first competitive service while not depriving St. James of its own local service as Station KRRW is licensed to St. James. Minnesota Valley provided a technical analysis proposing a new transmitter site showing that the entire community of Fairmont is well within the proposed 70 dBu contour of Station KXAC. Since a change in transmitter site is proposed, Minnesota Valley indicates that the loss area consists of 2,121 square kilometers containing 20,831 people that are served by seven FM stations. Minnesota Valley points out that Fairmont is an incorporated community with a 1990 Census population of 11,265 people and is the county seat for Martin county. Fairmont has a

daily newspaper, the Sentinel, a Chamber of Commerce, businesses such as the 3M Company, Hancor, Inc., Weightronix, Fairmont Feeds of Minnesota and Greenlee Fairmont Textron. Further, Fairmont is a vacation area offering fishing, boating and campgrounds along with golf and tennis. Minnesota Valley contends that reallocating Channel 263C2 to Fairmont will serve the public interest by providing the first competitive service to the larger community of Fairmont while not depriving the smaller community of St. James of local service.

3. We believe that Minnesota Valley's proposal warrants consideration since the allotment of Channel 263C2 at St. James could provide the larger community of Fairmont with its first competitive service while not depriving St. James of its sole local aural service. Although not necessary in this proceeding as Station KFMC is licensed to Fairmont, Minnesota Valley has provided information demonstrating that Fairmont is an independent community for allotment purposes. A staff engineering analysis indicates, using Minnesota Valley's licensed site and its proposed site, that there will be a gain in service of 22,362 people in an area of 2,796 square kilometers and a loss in service to 42,127 people in an area of 2,817 square kilometers and that the gain and loss areas are served by at least five existing full-time services. Although Minnesota Valley has provided information concerning loss of service, it is requested that Minnesota Valley provide more specific data regarding areas and populations which will gain service if Channel 263C2 is reallocated to Fairmont. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 263C2 at Fairmont.

4. Channel 263C2 can be allotted to Fairmont, Minnesota, in compliance with the Commission's minimum distance separation requirements at Minnesota Valley's specified site.¹

5. In view of the fact that the proposed allotment could provide a second service and a first competitive service to Fairmont without depriving St. James of its sole local service, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 263C2 to Fairmont, Minnesota. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to St. James and Fairmont, Minnesota:

Community	Channel No.	
	Present	Proposed
Fairmont, Minnesota	291C3	263C2, 291C3
St. James, Minnesota	263C2, 268C3	268C3

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are

¹ The coordinates for Channel 263C2 at Fairmont are 43-39-08 and 94-27-39. This site is located .24 kilometers (.15 miles) southwest of Fairmont.

incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before November 29, 1999, and reply comments on or before December 14, 1999, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Jerrold Miller
Miller & Miller, P.C.
P. O. Box 33003
Washington, D. C. 20033

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 445 Twelfth Street, SW, Washington, D. C 20554.